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SUMMARY OF WILLIAM. N. STACY

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIER BUREAU

June 4, 1998

Good afternoon. My name is William Stacy and I am here to discuss the issues surrounding how BellSouth makes unbundled network elements available to Competing Local Exchange Carriers (CLECs). First, let me assure you that not only is BellSouth willing to provide unbundled elements, but is indeed providing them. The methods BellSouth currently offers to the CLECs are: physical collocation (with and without a "cage" or enclosure); and virtual collocation. Using these methods, BellSouth provides UNEs to the CLEC, and the CLEC may either:

(1) combine these UNEs with equipment or facilities provided by the CLEC itself to create services the CLEC will offer to its end user customers, or

(2) combine only UNEs it acquired from BellSouth in order to create such services.

Additionally, BellSouth has offered to negotiate other arrangements for combining UNEs with the CLECs.

Second, it has been BellSouth's experience in the debate over recombination of unbundled elements, that the issue is generally one of pricing rather than of technical feasibility. Most CLECs want unbundled elements combined in a manner that looks just like a service that can be obtained through resale. I will refer to this as "sham unbundling". The difference, of course, is that for unbundled elements the CLECs pay cost-based rates; while for resale the charge is the retail service price less a wholesale discount.

Although Section 251 (c )(3) of the Telecommunications Act of 1996, requires that BellSouth provide access to its network elements, it is our belief that we are not required to provide combinations of network elements in order to comply with the fourteen point checklist in Section 271. The Eighth Circuit examined the FCC's Order and Rules and determined that BellSouth has no obligation to provide combinations of network elements that replicate retail services. The Court vacated Rules 51.315(c)-(f). The Court found that "Section 51.315(c)-(f), cannot be squared with the terms of subsection 251(c)(3)." The Court goes on to say that "[w]hile the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements." (emphasis added) Certainly if rebundling is not a requirement under the Act, it cannot be a requirement of the checklist.

Further, BellSouth believes that a plain language interpretation of the term "combine" is all that is needed to determine the intent of Congress regarding a CLEC's use of unbundled network elements. Thus, the Eighth Circuit's decision both clarifies Section 251(c )(3) and supports BellSouth's position that physical separation of network elements is necessary in order for those items to qualify as unbundled network elements. CLECs may combine, the various unbundled network elements which they request and are provided by BellSouth. I would note here that "combining" requires action on the part of the CLEC. CLECs must take action (that is, perform work to combine unbundled network elements) in order to achieve the combinations of UNEs that create services and features which are of benefit to end user customers.

To date BellSouth has found that the only viable methods by which a CLEC can fulfill the requirements of the Telecommunications Act of 1996 and allow a reasonable measure of network security and reliability are physical collocation and virtual collocation. The FCC's Local Competition First Report and Order at paragraph 198 makes it quite clear that some arrangements, while technically possible, are not technically feasible. That paragraph includes this statement: "Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible." Thus, arrangements which by their nature reduce network reliability fall into the category of being technically infeasible. Although I am not

a lawyer, I would also note that my understanding of the decision in *Iowa Utilities Board versus FCC* at paragraph 22 (8th Cir. 1997) is that BellSouth is not required to provide a CLEC with unbundled access to a network element merely because it is technically feasible to provide such access. While to date, only physical collocation and virtual collocation have been found to be technically feasible, BellSouth has been and remains open to exploring other methods. In particular, BellSouth has extensively discussed with CLECs five methods in addition to the physical collocation and virtual collocation methods.

Those methods are:

1. The use of switch administration capabilities referred to as "recent change".
2. The "direct access" to central office equipment such as Main Distribution Frames (MDF) and the like, including "supervised access".
3. The use of third party personnel to perform the "recent change" or "direct access" work.
4. The use of switch translations capabilities which BellSouth has offered to its centrex customers that allow some level of end user customer control over feature activation and service activation and rearrangement.

**5. The use of BellSouth technicians to perform the work on behalf of the CLEC for a negotiated fee.**

The first three of these methods fail as acceptable means of CLECs combining unbundled network elements for either or both of the following reasons:

1. Direct access, supervised access, and third party access, and recent change access (Items 1,2, and 3) introduce an significant reduction of network reliability and network security and are thus contraindicated by the technical feasibility standards of the Telecommunications Act of 1996.

Let me give two brief examples. If direct access were granted for a CLEC's technicians (or a third party) to enter a BellSouth central office and perform work on the frame, all subscriber services in that office are subject to any error on the part of the CLEC, whether workman error or record errors, and yet the CLEC has no responsibility or liability for the service it may interrupt. It is all too easy to envision a simple CLEC error where one wrong jumper is lifted, and a DS-1 serving an E-911 PSAP is interrupted.

In an even more serious scenario, an error using direct access to the recent change channel for an office could cause temporary interruption of service to a frame serving over 1000 end users, or potentially even an entire central office.

The risks to the end users and to the network as a whole seem to fall clearly into the category envisioned by the Commission's "technically infeasible" definition I referred to above.

2. In addition, the "recent change" method (Items 1 & 3) is simply not a means of combining unbundled network elements such as the loop and port, but rather is simply a means of temporarily interrupting customer service. At least one CLEC apparently believes that simply interrupting service for a customer and then reinstating that customer's service somehow constitutes a form of combining network elements.

If this were correct, such a service interruption and reconnection might conceivably be performed anywhere in the telephone network and be defined as recombining unbundled elements. For example, a technician could be sent to a customer's house, where the technician would open the network interface, unplug the inside wire from the loop, plug the inside wire and the loop back together and then claim that some form of network element combining had been accomplished. Obviously such a practice also could be done at a cross connect box outside the central office, in a manhole or wherever else the CLEC might choose to perform its "combining". I doubt if anyone would reasonably conclude that unplugging and re-plugging wires together would constitute combining of network elements, yet that is precisely the proposition contained in the

**"recent change" method. Additionally, in discussions between BellSouth and one CLEC as recently as May 18, 1998, the CLEC suggested that having a technician temporarily remove and replace jumpers at a Main Distribution Frame would likewise interrupt customer service and thus could rightly be considered a form of combining unbundled network elements.**

**This method is, in reality, resale with service interruption; nothing more than "sham unbundling" with a service interruption to switch customers from one provider to another. The CLECs have expressed bitter opposition in past proceedings to any process that requires a service interruption to change service providers, yet here they are proposing exactly that!**

**3. The next method suggested by the CLECs is a form of mediated access to manage translation changes (item 4). This is a curious suggestion for "combining UNEs", since this is exactly what BellSouth does today when the CLEC places an order to convert a service using the "Convert-as-is" or "Convert-with changes" resale order types. This is nothing more than another version of "sham unbundling" as I discussed previously.**

**4. One last item before closing. As an additional alternative to using Virtual and Physical Collocation for purposes of recombination, BellSouth is considering, as a business offering - for a charge - a "glue charge", combining UNEs at the request of a CLEC (Item 5).**

To conclude, BellSouth has embraced local competition, including all three methods of market entry: resale; unbundled network elements; and interconnection. It is providing unbundled network elements to CLECs upon request in compliance with the Telecommunications Act. The terms of the Act recognize that CLECs will take risks commensurate with the methods they choose to enter the market. BellSouth believes the Act's twin purposes of allowing CLECs access to unbundled network elements while preserving network reliability have, to date, been met only through the use of physical and virtual collocation. BellSouth remains open to further discussions and negotiation of any and all other methods which might be proposed, and certainly to the possibility of BellSouth providing the combination as a sound business proposition. Thank you, that concludes my summary.